

July 7, 2023

Xavier Becerra, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Melanie Fontes Rainer, Director
Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Becerra and Director Rainer:

The undersigned co-chairs of the Health and Long-Term Services and Supports (LTSS) Task Forces of the Consortium of Constituents with Disabilities (CCD) write with regard to the equity issues implicated in the unwinding of Medicaid continuous coverage. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society, free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance.

First, we want to express thanks for the April 4, 2023 State Health Official letter *Re: Ensuring Language Access for Limited English Proficient (LEP) Individuals and Effective Communication for Individuals with Disabilities During the States' Unwinding of the Medicaid Continuous Enrollment Condition*. Throughout the COVID-19 pandemic, the federal government's legislative and administrative actions enhanced access to necessary services for many people with disabilities including those with Limited English Proficiency (LEP).

We particularly appreciate that OCR identified LEP individuals and individuals with disabilities as populations that will be disproportionately impacted by unwinding due to difficulties navigating the renewal process. Improper terminations may occur for these populations despite meeting eligibility requirements. We also support the document's explicit discussion of federal civil rights laws and states' obligations to provide equal access for communities of color and language access for individuals with LEP, and the prohibition of discrimination and discriminatory impact, on the basis of race, color, national origin and disability. We greatly value the inclusion of best practices in the provision of language access and effective communication for people of color, individuals with LEP, and individuals with disabilities.

Additionally, we share the concerns expressed in the June 12, 2023 *Letter to U.S. Governors from HHS Secretary Becerra on Medicaid Redeterminations* regarding improper Medicaid terminations and providing states with additional strategies to prevent unnecessary loss of coverage. Thus far, procedural termination rates are alarmingly high. Initial data shows that as of June 13, 2023, more than a million people across 21 states have been disenrolled from Medicaid, while procedural terminations range from 33% to 89% of all terminations.¹ People with disabilities, older adults, and individuals with LEP are at greatest risk of losing coverage due to access barriers and unfamiliarity with the redetermination process.²

Providing limited accommodations and LEP services will not alone address all these barriers to ensure access to the program as is required. In many cases, people with disabilities need additional assistance and other accommodations to navigate this process, and our communications with state advocates suggest that many call centers and other beneficiary support systems are difficult to access or not responsive to their needs. Future communications to states should stress the importance of the full array of accommodations that HHS has described in other guidances, such as in-person assistance, extra time and help understanding the documents, and assistance with identifying and submitting appropriate documentation. Additionally, the non-discrimination provisions for LEP and disability require state agencies to take affirmative steps to ensure access for those populations. For example, busy call centers could offer appointments for LEP and disability populations to alleviate the screening out effect overloaded call center systems have on people who need assistance or extra time to use them.

While CCD supports continued guidance and technical assistance to states, we strongly implore the administration to take additional action to ensure states are complying with their legal obligations under federal law, including the Consolidated Appropriations Act of 2023. We are concerned that without proper enforcement from federal regulators, states will continue improperly disenrolling individuals, leading to the loss of essential services for the diverse members of the disability community.

CCD remains ready to collaborate with HHS to ensure that individuals from historically marginalized communities including people with disabilities, communities of color, older adults, and individuals with LEP, are not denied Medicaid coverage due to discrimination or communication barriers. We appreciate CMS and ACL's continued willingness to meet with CCD members and share information. We welcome the opportunity to further our advocacy with your administration to continue monitoring states' unwinding policies and ensure equitable access to crucial services.

¹ <https://www.kff.org/medicaid/issue-brief/medicaid-enrollment-and-unwinding-tracker/>

² <https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-the-unwinding-of-the-medicaid-continuous-enrollment-provision/#seven>

If you have any questions, please feel free to reach out to Gelila Selassie at gselassie@justiceinaging.org.

Sincerely,

The undersigned co-chairs of the Health and LTSS Taskforces,

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